IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.117 OF 2005

U.L.Sabnis Petitioner

versus

State of Maharashtra through
Secretary, School Education
Department and others Respondents

Shaikh Nasir Mesiha for petitioner.
L.T.Satelkar, AGP for respondents 1 and 2.
Ajit Karwande for respondent no.3.

WITH
WRIT PETTION (LODGING) NO.253 OF 2005

Central Railway Employees
Education Society Petitioner

versus

Smt.U.L.Sabnis and others Respondents

Ajit Karwande for petitioner.
Shaikh Nasir Mesiha for respondent no.1.
L.T.Satelkar, AGP for respondents 4 and 5.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.
DATE : 3rd March 2005

PC :

1. Mr.Shaikh appears for the petitioner in Writ Petition No.117 of 2005 who is respondent no.1 in Writ Petition Lodging No.253 of 2005. She is a lecturer in a Junior College and is hereinafter referred to as "the teacher". Mr.Karwande appears for respondent no.4 Junior College

management in the first petition as well as respondent no.3 society which is running the college. This society has filed Writ Petition Lodging No.253 of 2005 and wherein Mr.Karvande appears for the petitioner. The college and society are hereinafter referred to as "college". Mr.Satelkar appears for the Deputy Director of Education in both these petitions.

2. The teacher has filed her petition to seek a direction that her unpaid salary which is due to her be directed to be paid. This prayer flow from the interim order dated 21st October 2004 passed by the Presiding Officer of the School Tribunal in the proceeding which is pending before it and which she has initiated. The college has filed Writ Petition (Lodging) No.253 of 2005 to challenge the order of Tribunal whereby the Tribunal refused to vacate the said interim order which it had passed. Inasmuch as both these petitions are in the nature of cross petitions, we are hearing them together. We have issued rule and heard both these matters at the same time. As far as the petition filed by the teacher is concerned, a reply has been filed and rejoinder has also been filed. Submissions in this petition are treated as submissions in reply

to Writ Petition (Lodging) No.253 of 2005 filed by the college.

3. The grievances of the petitioner teacher have a background. She states that she joined this junior college of commerce on 1st July 1999. She has necessary qualifications of M.Com. and B.Ed.. At that time she was given to understand in the appointment letter itself that she is appointed on Division No.12D and her salary will be paid on receiving grants from the State Government. The institution was receiving partial grants at that time and further recognition was pending.

4. It appears that her services were discontinued on 12th March 2001. She filed an appeal in the School Tribunal. That order was interfered by the Tribunal and an interim order was granted staying the order of termination. Wages were not paid inspite of that order and the teacher was required to file a writ petition in this Court bearing Writ Petition No.2359 of 2001. In view of the order passed by High Court thereon, the junior college management was required to deposit the salary amount wherefrom 50% has been permitted to be withdrawn.

5. Thereafter consent terms were arrived at between the parties and in the consent terms which were arrived at in the School Tribunal as well as in the High Court, it was agreed that the teacher will be retained with continuity and all consequential benefits from her initial date of appointment i.e. 1st July 1999. It was recorded that she will continue to teach in unaided recognised division but it was also recorded that she will be paid the emoluments as full time teacher. Those consent terms were arrived at in the School Tribunal on 29th October 2000.

6. It appears that she was discontinued once again on 21st March 2004 and she was required to move the School Tribunal once again and by it’s order dated 30th June 2004 the Tribunal stayed that order. The petitioner teacher was allowed to join on 1st July 2004. However, the college management brought in a new teacher on 2nd August 2004 who is joined herein as respondent no.5. It is stated that this respondent no.5 was brought as a Shikshak Sevak and it is also stated that the person concerned belongs to Special Backward Class. After joining of respondent no.5, the college stopped giving the necessary work load to

the petitioner.

7. This led the petitioner teacher to file one more interim application in the School Tribunal and by it's order passed on 21st October 2004 the Tribunal directed the junior college management to comply with the order passed earlier on 30th June 2004 in true spirit and to pay her salary regularly. This order is not being implemented and therefore petition No.117 of 2005 is filed by the teacher. The college management filed an application that the interim order be vacated and that application came to be dismissed on 21st October 2004 and therefore the college management has filed Writ Petition (Lodging) No.253 of 2005.

8. Now as can be seen, the petitioner teacher has the necessary qualifications. She has been teaching in the college from July 1999. She was assigned the Division 12D. The subjects which she was supposed to teach were Secretarial Practice, Organisation of Commerce, and Economics. These are all subjects of junior college taking a course in Commerce. It is not the case of the college that her work is not satisfactory. The appointment of petitioner states that she was to teach for the Division

12D. In an affidavit made by the President of the College Institution on 4th September 2004 in the School Tribunal he has stated in para no.10 that the newly introduced Division 12D has come on partial aid. These were the factors which were considered by the School Tribunal leading to the order passed on 21st October 2004.

9. Mr.Shaikh, learned counsel for teacher submitted that inasmuch as the petitioner has been teaching regularly, she is entitled to her salaries. Besides as stated by the President of institution since the division has come on partial aid there is no reason why her salaries should not be paid.

10. Mr.Karvande appearing for the college management on the other hand submitted that the appointment of the petitioner teacher was initially for a limited period. He further tried to submit that number of divisions in the junior college has gone down and there is no justification to the additional number of teachers. As far as this submission is concerned, in an order passed by Division Bench of this Court on 12th April 2002 the college management was given liberty to bring to the

notice of the Deputy Director of Education as to whether any number of divisions are reduced and any teachers have become surplus. We asked Mr.Karvande to show us any correspondence in that behalf but he has not brought it to our notice. The other submission was based on the requirement to follow the roster. Although a chart of teachers is annexed in this behalf, it is not stated as to how the roster is followed requiring that a person from Special Backward Class be brought in. No satisfactory particulars are given by the college management on either of the two grounds whereby we could be persuaded to interfere in the order passed by the School Tribunal.

11. In the circumstances, we are inclined to allow the petition of teacher. The petitioner-teacher has been teaching right from 1999, there is work load available as of now and the subjects which are taught are the subjects of junior college of Commerce. There is no reason why the petitioner should not be paid salary as directed by the interim order of School Tribunal. In the circumstances, as far as Writ Petition No.117 of 2005 is concerned, we allow it in terms of prayer clause (a) inasmuch as college

management is hereby directed to pay the arrears of salary of the petitioner. We accept the statement made by Mr.Karvande and the arrears with interest will be paid to the petitioner within two months i.e. by the end of April 2005. The petitioner- teacher has sought interest @ 12% p.a. however since the rates of interest have gone down, we award interest @ 8@ p.a. on the arrears. We direct the college management to clear the arrears within the period mentioned above. The college will pay her month to month salary also regularly as per the correct scale and allowances.

12. As far as other prayers with respect to grant of approval, extending all service benefits of continuity of service and payments of 5th pay commission and benefits such as Provident Fund deduction are concerned, the petitioner-teacher will make appropriate representation to the Deputy Director of Education within two weeks from today and furnish a copy thereof to the college management. The college management may file its reply within further two weeks thereafter. The Deputy Director of Education will decide the representation preferably within eight weeks thereafter after hearing both the

parties. Rule in Writ Petition No.117 of 2005 is made absolute in the aforesaid terms.

13. We were infact inclined to award costs in this matter considering the fact that the petitioner-teacher has been made to run around and to take proceedings after proceedings. However, in view of pursuation of Mr.Karvande and his statement that arrears will be paid within two months with interest, we direct that in the event the arrears and interest thereon are not paid within two months the respondent institution will be required to pay costs of Rs.10,000/- to the petitioner.

14. As far as Writ Petition (Lodging) No.253 of 2005 is concerned, in view of the fact that we have declined to interfere into the interim order dated 21st October 2004 passed by the School Tribunal and infact directed it’s implementation, the order refusing to vacate the same is also upheld and therefore this petition stands dismissed though without any separate order as to costs.

15. Although both these petitions are disposed of, the main proceeding initiated by the

petitioner-teacher is pending in the School Tribunal. The submissions of both the parties will be available and open to them to be raised before School Tribunal and only after considering the same the School Tribunal will decide the appeal at the earliest.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)